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*legis* by the adjudication." See also *in re Schlesinger, supra*; *in re Rosser* (C. C. A., Mo. 1900) 101 Fed. 562.

RESTRAINING PROSECUTION OF ACTION BROUGHT IN ANOTHER STATE. —Will the courts of one State, having jurisdiction over the person of a defendant, enjoin him from bringing or prosecuting an action in another State? Generally speaking they will, when, by so doing, more complete justice can be done between the parties. In *Locomobile Co. of America v. American Bridge Company of New York* (1903) 80 N. Y. Sup. 288, such an injunction was granted, the Court being convinced, in view of the circumstances of the case, that better justice could be done in New York than in Connecticut.

The question is at best one of policy. For, having once obtained jurisdiction, a court of equity can, by acting *in personam*, prohibit the inequitable acts of either party. But the propriety of exercising this power, when its exercise indirectly interferes with the courts of independent States, has been the cause of much difference of opinion.

In England both the power and the propriety were formerly doubted. In *Lowe v. Baker* (1692) 2 Freem. 125 Lord CLARENDON refused to grant the injunction on the ground that the court had no authority to bind a foreign court. The reporter, however, throws doubt on his conclusion by adding "Sed quære, for all the bar was of another opinion?" This doubt was finally dispelled by Lord BROUGHAM in *Portarlington v. Soulby* (1834) 3 Myl. & K. 104, in which he reviews the whole subject, points out that the court is only commanding the obedience of the defendant, and declares that the power should be exercised whenever justice demands it.

In the United States the subject assumes several aspects. On the one hand there is danger of conflict between the courts of different States, and on the other of conflict between State and Federal courts. And in each of these there arise two questions: 1st. Is such an interference in accord with the spirit of comity that should exist? 2d. Does such an injunction contravene the full faith and credit clause of the Federal Constitution, (Const. Art. IV. Sec. 1)?

Considering these in the order named, we find in early times a strong tendency on the part of the courts of one State to refuse to interfere, even in this indirect manner, with the courts of other States. *Boyd v. Hawkins* (N. Car. 1833) 2 Dev. Eq. 229. New York probably the strongest exponent of the doctrine and *Mead v. Merritt* (1831) 2 Paige 402 is cited by all its advocates. In that case Chancellor WALWORTH says "I am not aware that any court of equity in the Union has deliberately decided that it will exercise the power, by process of injunction, of restraining proceedings which have been previously commenced in the courts of another State." This case was followed in *Williams v. Ayrault* (1860) 31 Barb. 364, and *Harris et al v. Pullman et al.* (1876) 84 Ill. 20, and was interpreted as laying down an iron-bound rule of policy. But this interpretation may be doubted in the light of another case decided also by Chancellor WALWORTH, *Burgess v. Smith* (1847) 2 Barb. Ch. 276, and of a long line of cases in New York and elsewhere, in which the courts refuse to be bound in this absolute manner.

In *Vail v. Knapp* (1867) 49 Barb. 299, the court say "While as a general rule, the propriety of which is apparent, the courts of this

State decline to interfere by injunction to restrain its citizens from proceeding in an action which has been commenced in the courts of a sister State, yet there are exceptions to this rule, and when a case is presented, fairly constituting such exception, extreme delicacy should not deter the court from controlling the conduct of a party within its jurisdiction to prevent oppression or fraud." This is a fair expression of the present policy of the courts of this country as well as of England. 2 Story Eq. Jr. §§ 899, 900; *Dehon v. Foster* (1862) 4 Allen 545; *Engel v. Scheuerman* (1869) 40 Ga. 206; *Snook v. Snetzer* (1874) 25 Ohio St. 516; *Keyser v. Rice* (1877) 47 Md. 203; *Allen v. Buchanan* (1892) 97 Ala. 399.

The constitutionality of such proceedings has been doubted, but that phase of the question was settled by *Cole v. Cunningham* (1889) 133 U. S. 107, in which the Supreme Court upheld the injunction, recognizing the essential distinction between a court's refusing to give credit to the decrees of another court, and a court's exercising its power to restrain an individual.

On principle the same conclusions should be reached in conflicts between State and Federal courts. Such has not been the case. Judiciary Act 1793 (incorporated in Revised Statutes U. S. § 720) prohibited Federal courts from granting injunctions to stay proceedings in State courts, except where authorized by bankrupt laws. This, however, has been construed to apply only to cases in which the State court had first obtained jurisdiction. *Fisk v. Union Pacific Ry. Co.* (1873) 10 Blatchf. 518; *French v. Hay* (1874) 22 Wall. 250. Thus far the only inconsistency in the results has been created by statute. The real inconsistency is met with when we consider the reverse of the proposition, viz.: the right of a State court to interfere in Federal proceedings. It has been broadly stated that the State court has no such right. *Riggs v. Johnson Co.* (1867) 6 Wall. 166. This can only be supported on the ground of public policy, which recognizes the danger of conflict between State and Federal courts, growing out of that peculiar concurrent jurisdiction. Even granting that possibility, the better reasoning would seem to allow the injunction against a litigant in a Federal court as well as in a sister State court. *Ackerly v. Vilas* (1862) 15 Wis. 440; *Home Insurance Co. v. Howell* (1873) 24 N. J. Eq. 238.

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DECLARATIONS AS PART OF THE *RES GESTA*.—The looseness of modern decisions in the interpretation of the so-called *res gesta* rule was well illustrated by the recent case of *Rogers v. Manhattan Ins. Co.* (Cal. 1903) 71 Pac. 348, which held, in a suit in which the death of an insured person was the issue, that a letter written by him immediately prior to his disappearance, announcing his intention to commit suicide, was admissible as part of the *res gesta*.

The Latin phrase *res gesta* is generally supposed to have occurred first in *Tooke's Case* (1794) 25 Howell's State Trials 440, and to have taken the place of the English word "transaction" which was used in *Rex v. Hardy* (1794) 24 Howell's State Trials 199 and earlier cases in the discussion of this class of evidence. 15 American Law Review, 1. Although its development in the law has been marked by a decided tendency to envelop its meaning in such obscurity that to-day nearly any hearsay may be introduced under cover of the phrase